THE HON'BLE SRI JUSTICE C.V. RAMULU

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+W.P..No.5593 of 1998

%Dated 21-6-2007

Between:

D.N. Ramana Reddy ..... Petitioner

and

Union of India, rep. by its
Secretary, Border Roads
Development Board, Ministry
of Surface Transport,
Sena Bhavan, New Delhi & others ….. Respondents

!Counsel for the petitioner : SHRI ABINAND KUMAR SHAVILI

^Counsel for Respondents: SHRI A. RAJASEKHAR REDDY

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1993 SC 1662
2. 1996(1) ALD 1023
3. 1996(2) ALD 581
4. 2000(5) SCC 621
5. 1997(3) SCC 321

THE HON'BLE SRI JUSTICE C.V. RAMULU

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O R D E R:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Orders dated 22-7-1997 of the 5th respondent and also the Orders dated 3-12-1997 of the 2nd respondent and quash the same as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and consequently to direct the respondents to accept the withdrawal of resignation submitted by the petitioner and allow him to continue in service of the Border Roads Organization (BRO).

It appears, petitioner on passing Union Public Service Examination in 1988 was appointed as Assistant Executive Engineer in the BRO. He joined the said Organization in May,1990 and was posted to 86 Road Construction Company (Projects), Swastik and after rendering considerable length of service in the said project, he was transferred to 1443 Bridge Construction Company (BCC) Project, Udayak . While working at 1443 BCC he had applied for leave from 30-4-1996 to 10-6-1996 owing to some domestic/personal difficulties and came to his native place at Hyderabad. Though prior to proceeding on leave, 3rd respondent had called for willingness of the employees for being posted to BCC 1444 to which the petitioner did not opt, during the subsistence of leave, he was informed that he had been transferred to 1444 BCC Project, Udayak. Since he could not

come out of personal problems, he had extended the leave for a further period of 30 days on 7-6-1996, but the respondents had sanctioned the said leave for only 20 days vide Telegram dated 15-6-1996. Since the domestic problems were not solved, he applied for extension of leave for 120 days on 26-6-1996 and requested the leave to be granted upto 26-10-1996 hoping that he would come out of his personal problems. However, the leave was not sanctioned and to this effect, a Telegram was sent by the Department on 18-7-1996. Apprehending that the leave would be refused on the ground that he extended the leave to avoid joining at 1444 BCC, he requested the Chief Engineer on 22-7-1996, to at least sanction leave upto 10-9-1996 promising to join anywhere on expiry of leave, so that he could join after clearing his personal problems. Even then, his request was not considered by the 3rd respondent. Further, respondents 3 to 5 started exerting pressure through several Telegrams and letters threatening disciplinary action. Petitioner was caught in a fix, just as between devil and deep sea and not knowing what to do, submitted his resignation on 28-7-1996 in utter confused state of mind. He considered that resignation would be lesser evil than the disciplinary action under the Army Act at that time. Out of frustration, he tendered resignation. On 3-8-1996 and again on 14-8-1996, he received communications from the 4th respondent stating that he must first report and then only the resignation letter would be considered. Further, a similar communication was also received from the 4th respondent on 20-8-1996. Respondents have also issued letters to his father and his wife as a part of procedure to be followed for initiating disciplinary action under the Army Act. However, in the meanwhile, the prolonged domestic problems have found solution on their own accord. Therefore, immediately on 2-12-1996 he sent a letter withdrawing the resignation dated 28-7-1996

through proper channel marking advance copies to respondents 1 and 2. He did this hoping that positive orders would be passed, as no orders of acceptance of resignation have been received till such date. As the matter stood thus, he had received a communication on 7-1-1997 from the 5th respondent stating that the resignation submitted by him was accepted by the 4th respondent with effect from 1-11-1996. The said letter was dated 6-12-1996, which was despatched to him only on 1-1-1997, much after withdrawal of resignation. He was still awaiting that the authorities would pass sympathetic orders on the letter of withdrawal of resignation. Further, the 2nd respondent informed the petitioner on 5-2-1997 that the withdrawal of resignation letter was conditional and he should submit unconditional request for withdrawal of his resignation. A similar communication was also received from the 3rd respondent-Chief Engineer herein on 13-2-1997 advising him to make unconditional withdrawal of resignation. He replied on 24-2-1997 to the authorities stating that withdrawal of his resignation never made on any condition and even otherwise, it may be treated as unconditional one. Thus, he further waited for favourable orders from respondents to accept his withdrawal of resignation and allow him to join duty. However, to his utter surprise, 5th respondent passed an Order rejecting withdrawal of resignation, which was received by him on 22-7-1997 quoting Rule 26(4)(iii) of the Central Civil Services (Pension) Rules,1972. Aggrieved by the same, he had appealed to the 1st respondent to consider his case sympathetically and accept the withdrawal of resignation and allow him to join duty. Respondent No.2, however, stated that his resignation was accepted much prior to his withdrawal letter dated 2-12-1996 i.e. on 1-11-1996 and rejected the appeal by an Order dated

3-12-1997. Challenging the said orders, the present Writ Petition is filed.

A detailed counter affidavit has been filed by the 2nd respondent denying the allegations made by the petitioner. At paragraphs 7 and 8 of the counter, it is asserted as under:

> "7…….He had rendered more than six years of service in the Organization in the capacity of a Group 'A' Officer and must have gained lot of knowledge about the service conditions of BRO. The whole correspondence has been made by the petitioner regarding his extension of leave/resignation from service in his own handwriting and wherein it could be felt that this correspondence was made by him in an utter confused state of mind/without serious thinking or out of frustration. It is upto the Officer to choose his own way either to resign or to continue in service. In his application dated 28th July,1996 addressed to Secretary, Border Roads Development Board, he had stated that he took 40 days Earned Leave w.ef. 30th April,1996 due to serious domestic problems and since the events had become more complicated, he was not in a position to assess the correct requirement of leave and resume duty. He had requested the Government to accept his resignation w.e.f. 27th Oct,1996 which was accordingly accepted by the competent authority with immediate effect vide Sectt BRDB OM NO.F.139(1)/96-Pers,
> dated 1-11-96.
>
> 8…….The directions issued by the respondent to the petitioner asking him to rejoin duty first so as to consider his application for resignation were in order. As per Rules, no Govt. servant can be permitted to quit/resign from service while on leave, barring exceptional circumstances. This was also done to counsel the petitioner to reconsider his decision to quit the service. The directions of the Department to the petitioner for his rejoining before acceptance of his resignation was not taken by the Officer in its right perspective. Had the petitioner acted upon the directions of his superior authority, the present predicament of the petitioner could have been avoided. All actions taken by the Department were to help the petitioner to reconsider his decision of quitting the service. Similarly, the parents/next of kin of the petitioner were also advised to suggest/advise him to rejoin his duty. General Reserve Engineer Force being an integral part of Indian Armed Forces, certain provisions of Army Act/Rules are made applicable to its members for maintaining discipline. Overstayal of leave is subject to be dealt under Army Act and accordingly, the petitioner was advised to rejoin duty, failing which, disciplinary action could be taken. This does not

mean that the respondent had been prejudiced and disciplinary action would be taken against the petitioner. Hence, the contention of the petitioner is imaginary and derived out of an after thought."

It was further stated that the petitioner had failed to rejoin duty even after repeated directions from the respondents. Since the petitioner made up his mind to resign from service, he submitted his letter of resignation dated 28-7-1996 which was accepted with immediate effect by the competent authority on 1-11-1996. However, the acceptance of resignation was then conveyed to the petitioner vide 1443 BCC letter No.1024/DNR/40/E1, dated 6-12-1996. Then the petitioner tendered withdrawal application of his resignation dated 2-12-1996 with a condition that on acceptance of the same he may be posted to unit/station nearer to his home town. Since it was a conditional one, he was advised to submit an unconditional withdrawal application vide letter dated 3-2-1997and HQ CE(P) Udayak letter No.10016/XY/E1A, dated 13-2-1997. The unconditional withdrawal application dated 24-2-1997 was considered by the Secretariat, BRDP and rejected in terms of Rule 26(4)(iii) of the Rules vide letter dated 28-5-1997. Petitioner made another application of withdrawal, which was also rejected on 19-11-1997.

Heard both sides.

The facts are not at all in dispute. The petitioner, when his leave was refused, sent resignation letter dated 28-7-1996. The same was not immediately accepted. However, in the meanwhile, the petitioner sent a letter dated 2-12-1996 withdrawing his resignation. Thereafter, he received a communication dated 6-12-1996 on 7-1-1997 stating that his resignation was already accepted by the competent authority vide OM No.139(1)/96-pers, dated 1-11-1996. However, immediately

thereafter, another communication dated 3-2-1997 was received by the petitioner asking him to submit unconditional withdrawal application, so that the same could be considered. He had also received a similar communication dated 13-2-1997 from the 3rd respondent. On 24-2-1997, the petitioner replied that the earlier letter of withdrawal of resignation was unconditional and it may be treated as such and he may be permitted to join duty. Thereafter, nothing happened and on 22-7-1997 the impugned Order was passed stating that the withdrawal of his resignation could not be permissible in the light of Rule 26(4)(iii) of the Rules.

It is an admitted fact that the so called acceptance of the letter of resignation on 1-11-1996 by the competent authority was communicated to the petitioner only through the letter dated 6-12-1996 of the 5th respondent, which was received by the petitioner on 7-1-1997. Assuming that the resignation of the petitioner was accepted, it was never communicated to him before he had sent the letter of withdrawal of resignation dated 2-12-1996. In this regard, learned counsel for the petitioner placed reliance on the decision of the Apex Court reported in **MOTI RAM v. PARAM DEV**[1] wherein it was held that resignation becomes effective from the date of communication and not from the date when it was accepted. He had drawn attention of this Court to Paragraph-15 of the said decision, which reads as under:

> "15. As pointed out by this Court, 'resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. (See : Union of India v. Gopal Chandra Misra,

1978 (3) SCR 12 at p. 21 : (AIR 1978 SC 694 at pp. 699-700)). If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. **In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken**. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it." (emphasis supplied)

Learned counsel for the petitioner also relied upon the Judgment reported in **K. SUDHA NAGARAJ v. CHIEF MANAGER, ANDHRA BANK**[2] and drawn attention of the Court to paragraphs 2,4,9,10 and 12 and submitted that the resignation becomes effective only from the date of communication of the acceptance to the employee and not otherwise. Paragraphs 4,9,10 and 12, which are relevant, read as under:

"4. The crucial question that has to be considered in the Writ Petition is whether as on 19-9-1990 when the application for withdrawal for resignation was submitted by the petitioner, the resignation was accepted and that the petitioner was informed of the acceptance of the resignation.

9. It is now well settled by the decisions of the Supreme Court and various High Courts that it is open for the employee to withdraw the resignation before it comes into effect. Admittedly, in the instant case, the resignation of the petitioner dated 19-1-1990 was never accepted nor acceptance communicated to her till 19-9-1990……..

10……Before he is relieved, the Government

servant has *locus poenitentiae* to withdraw his application requesting voluntary retirement. Permission for cancellation can be allowed so long as he continues to be in service and not after it was terminated or relieved or ceased to discharge his duties and drawing his salary. From this perspective, we hold that mere acceptance of the request of the appellant for voluntary retirement is not conclusive. Its communication is mandatory and it becomes effective from the date of its service, viz., 2nd July,1983 by which date the appellant has already withdrawn his letter i.e. on 27th May,1983.

12. Applying the principles laid down by the Supreme Court, it has to be held that it is always open for the employee to withdraw his resignation, before the expiry of the effective date. Even in case where no effective date is stipulated, the resignation can be withdrawn before the acceptance of the resignation is communicated. In the instant case, no effective date has been notified by the employee and what all she stated in her letter dated 19-1-1990 was that she intends to tender resignation due to domestic reasons and that the same may be accepted and she may be relieved. As per the counter of respondents, the petitioner was not relieved as on 19-9-1990, nor the acceptance of resignation was communicated. Therefore, it has to be held that there was no acceptance of resignation in the eye of law."

The said Judgment was confirmed by a Division Bench of this Court in **CHIEF MANAGER, ANDHRA BANK v. K.S. NAGARAJ**[3]. He had also relied upon the decision of the Supreme Court rendered in **SHAMBHU MURARI SINHA v. PROJECT & DEVELOPMENT INDIA**[4] and drawn attention of the Court to paragraph-5, which reads as under:

"5. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18-10-1995 was accepted by the respondent-management by their letter dated 30-7-1997, the appellant was not relieved from service and he was allowed to continue in service till 26-9-1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7-8-1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdrawn

> the said offer after its acceptance but before it is made effective. The question is squarely answered by the three decisions, namely, Balram Gupta v. Union of India, 1987 (Supp.) SCC 228 : (AIR 1987 SC 2354 : 1988 Lab IC 46); J. N. Srivastava v. Union of India, (1998) 9 SCC 559 : (1998 AIR SCW 4057 : AIR 1999 SC 1571) and Power Finance Corporation Ltd. v. Pramod Kumar Bhatia (1997) 4 SCC 280, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date".

From the above Judgments, it is clear that in a case where the act of relinquishment (resignation) is a bilateral character, it requires to be accepted and unless it is accepted and the said acceptance is communicated, it will not come into effect. In this case, admittedly, even according to the respondents, the acceptance of the resignation with effect from 1-11-1996 was communicated through letter dated 6-12-1996, which was received by the petitioner on 7-1-1997 and in the meanwhile, on 2-12-1996, the petitioner had already sent the letter of withdrawal of resignation. Therefore, the purported acceptance of resignation with effect from 1-11-1996 was never communicated to the petitioner before he submitted application for withdrawal of resignation on 2-12-1996 and thus, the alleged acceptance of resignation has not come into effect. That apart, it is not denied in the entire counter that the letter of withdrawal of resignation dated 2-12-1996 was not received by the respondents before the letter dated 6-12-1996 and/or 7-1-1997. Further, the respondents themselves addressed letters dated 3-2-1997 and 13-2-1997 asking the petitioner to submit unconditional withdrawal application as if the earlier one was a conditional one. This further makes it clear that the resignation letter sent by the petitioner was never accepted. Therefore,

Rule 26(4)(iii) of the Rules has no application to the facts of this case. The said Rule reads as under:

> "**Forfeiture of service or resignation:-** (1)……
> (2)……

(3)……..

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely—

(iii) that the period of absence from duty between the date on which the resignation became effective and the date which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days."

The above Rule contemplates forfeiture of service or resignation. Clause (iii) of sub-rule (4) of Rule 26 contemplates that the appointing authority may permit a person to withdraw his resignation in the public interest on condition that the period of absence from duty between the date on which the resignation has become effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than 90 days. In this case, neither there is any date on which the resignation became effective nor there is any date on which a person was allowed to resume duty as a result of permission to withdraw resignation. Therefore, in the guise of completion of more than 90 days between the date of effecting of resignation and the date of permission to join duty, the case of the petitioner could not have been rejected. The said provision of law has been wrongly invoked. Therefore, the contention of the learned counsel for the respondents that once the resignation was accepted with effect from 1-11-1996, even if it is communicated after the withdrawal letter sent by the petitioner, it has no consequence and under Rule 26(4)(iii) of the Rules since 90 days have elapsed from the date of acceptance i.e. 1-11-1996, the question of permitting the petitioner to withdraw the resignation and allow him to join duty does not arise, cannot be accepted. The judgment relied upon by the learned counsel for the respondents reported in **STATE OF HARYANA v. RAM KUMAR MANN**[5] has no relevance to the facts of this case. In that case, the

petitioner therein having resigned and contested the elections and after defeat in the elections, filed an application seeking to withdraw his resignation. The case on hand is not one such case.

For all the above reasons, the impugned Orders are liable to be set aside and are accordingly set aside. The Writ Petition is, thus, allowed. The respondents are directed to reinstate the petitioner into service forthwith with all consequential benefits. No order as to costs.

21-6-2007

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LR COPIES : Yes

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[1] AIR 1993 SC 1662

[2] 1996(1) ALD 1023

[3] 1996(2) ALD 581

[4] 2000(5) SCC 621

[5] 1997(3) SCC 321